



Health Policy Briefing

May 27, 2013

Congress Recesses for Memorial Day, Leaving House and Senate with Differing Budgets

House Appropriations Committee Approves FY 2014 302(b) Subcommittee Allocations

On Tuesday the House Before adjourning for the Memorial Day recess, the House Appropriations Committee approved by voice vote the FY 2014 302(b) spending allocations (i.e., the cap on spending) for each of its subcommittees. The committee also passed the FY 2014 Military Construction/Veterans' Affairs appropriations bill with a \$73 billion cap on FY 2014 spending. The Department of Veterans Affairs (VA) would get \$63.1 billion and military construction would get \$9.9 billion. VA medical services would receive \$43.6 billion. In addition, the full-committee allocated the Labor/Health and Human Services/ Education subcommittee \$121.797 billion in spending, a \$27.8 billion cut below current sequester-level spending. In contrast, the spending cap for defense-related programs was set at \$522 billion, an increase over the \$498 billion that would otherwise be allowed under sequestration. Committee Democrats were unable to delay the committee's actions to allow for a possible agreement between the House and Senate on the differing budget resolutions passed in each chamber. The committee also defeated along party

lines a Democrat amendment that would raise the overall \$967 billion spending cap set under the rules of sequestration (included in the House-passed budget resolution) to \$1.058 billion which is the level included under the President's budget and the level likely to be used by the Senate Appropriations Committee. In other budget news, House Republicans continue to discuss their options in obtaining tax reform, entitlement reform or other spending curtailments from the President and congressional Democrats in trade for their support of any increase in the federal debt limit. **House Speaker John Boehner** has previously insisted that any increase in the debt limit be accompanied by similar spending reductions.

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PPACA Health Reform Update

GOP and Democrats Continue to Attack and Defend the PPACA

Rep. Joe Pitts (R-PA) said he will modify and reintroduce his legislation to fund the high-risk programs which failed to gain enough support among House Republicans to be considered on the House floor. He said the new version would repeal the Patient Protection and Affordable Care Act (PPACA) Prevention and Public Health Fund and reallocate the \$8.5 billion in savings to deficit reduction and grants to states to fund their own high-risk pools or start new ones. The bill may have a better chance for approval from House Republicans, given that new members have had an opportunity to vote for a full repeal of the PPACA (H.R. 45) and the bill would prevent further Department of Health and Human Services' (HHS) efforts to use the money for other PPACA implementation efforts (such as \$53 million for the navigator program under which CMS has received 830 letters of intent to participate in the program). Senator Dean Heller (R-NV) has also taken aim at the Internal Revenue Services' (IRS) enforcement of the PPACA by filing an amendment to S. 954, a farm bill, prohibiting the agency from receiving funds to enforce the law. Senators John Cornyn (R-TX) and Rep. Diane Black (R-TN) have also introduced legislation, S. 983 and H.R. 2022, which would have the same effect. Although the Director of the Centers for Medicare and Medicaid Services (CMS) Center for Consumer Information and Insurance Oversight (CCIIO) testified at a House Oversight and Government Reform Committee that there is no connection between the IRS implementation of the PPACA and the IRS' Tax Exempt/Government Entities Division targeting of conservative and other groups for selective scrutiny, Senator John Thune (R-SD) sent a letter to the Department of Justice with a demand that the IRS refrain from implementing the PPACA until the Department of Justice determines whether there will be action taken on the former IRS Tax Exempt Division head who was recently placed in charge of IRS efforts to implement the health law. At a recent House Energy and Commerce Oversight Subcommittee hearing on the cost of health insurance premiums likely to be charged under the PPACA, Republicans released a study, *The Looming Premium Rate Shock*, stating that premiums will increase significantly for most Americans. It said that premiums for new individual policies under the PPACA will increase by 96% and that premiums for grandfathered policies will increase by 73%. On the other hand, the full-committee ranking member Rep. Henry Waxman (D-CA) released a study, *Analysis of Recent Filings of Proposed Affordable Care Act Insurance Rates in Five States*, which he said shows that there will not be widespread rate shock and that rates will actually decrease in PPACA "bronze" plans by 11% in Oregon and by 21% in Washington. He noted that in Maryland the original Blue-Cross/Blue-Shield rate filing requesting a 50% increase in premiums was reduced by one-half. Two subcommittees of the House Committee on Oversight and Government Reform also took aim at the so-called "State Assister Grants" conjured up by HHS when Congress refused to include further funding for the PPACA "Navigator" program in the FY 2013 continuing resolution. The CCIIO director testified that while the state assister program will perform the same functions as the Navigator program, it is only a temporary one-year program to help states who have said they do not have the funds to establish their permanent Navigator programs. Answering a question on the legality of the assister program, the CCIIO director said that the PPACA provides statutory authority for all exchanges to "provide outreach and education and enrollment assistance to people." Defending HHS Secretary Sebelius' outreach to insurers to assist in informing the public about enrollment and exchange eligibility rules under the health law, the CCIIO director said this effort was similar to the efforts by AARP and the pharmaceutical industry to educate the public in 2006 about the new Medicare Part D program.

CMS Promotes Medicaid Enrollment Under PPACA

CMS provided state Medicaid programs with a list of five targeted Medicaid Enrollment Strategies in an effort to expand the state programs under the PPACA rules. The strategies focus on individuals for whom states already have eligibility information on file, including: adopting 12-month continuous eligibility for parents and other adults; implementing the early adoption of Modified Adjusted Gross Income (MAGI)-based rules; extending the Medicaid renewal period so that renewals that would otherwise occur during January through March of 2014 occur later; and enrolling individuals into Medicaid based on Supplemental Nutrition Assistance Program (SNAP) eligibility. Subject to other requirements, CMS said that states using the strategies would be able to take advantage of the PPACA enhanced Federal Medical Assistance Percentages (FMAP) rules, 90% for developmental costs and 75% for operations.

Medicare/Medicaid/Public Health Services Corner

New Medicare Doc Fix Legislation to be Released

The House Ways and Means and Energy and Commerce Committees announced that they intend to release new legislative language this week which would implement proposed changes to the current Medicare physician payment SGR system. On June 5th the House Energy and Commerce Health Subcommittee has scheduled a hearing to take testimony on the legislation. House Republicans are expected to insist that the cost of the legislation be offset, but that the form such pay-fors will take will be decided on later.

House W&Ms Health Subcommittee Discusses Medicare Reform

Witnesses at a House Ways and Means Health Subcommittee hearing testified that Medicare reform should take place as soon as possible given the program's impending insolvency. Among the changes discussed that would help extend program solvency are measures to: increase the Part B deductible; raise Parts B and D premiums for higher-income individuals; limit Medigap coverage to help reduce unnecessary expenditures and create a public Medicare supplemental plan; introduce a home health care beneficiary copayment; and totally restructure the Medicare program (e.g. to provide one deductible for Part A and B, etc.). However, some witnesses cautioned that such cost-saving measures should only be considered together with broad structural reforms that would also provide new protections for low-income beneficiaries such as requiring drug companies to provide rebates for dual-eligibles. Chairman Kevin Brady (R-TX) said that that the main question is how Congress can act in 2013 to extend Medicare solvency for 20 years. Rep. Jim McDermott (D-WA), however, said that the several Medicare reforms in the President's budget should not be cherry-picked but be considered only in connection with a grand, balanced budget deal.

GAO to Investigate Accuracy of Part D Online Plan Finder

Senators Bill Nelson (D-FL) and Susan Collins (R-ME) have asked the Government Accountability Office (GAO) to investigate whether information on Medicare Part D prescription drug plans and associated drug pricing on the Medicare Part D plan finder is complete and accurate and displayed in a consistent manner so as not to mislead beneficiaries. They also asked GAO to determine if plans are meeting the required CMS marketing guidelines. In a follow-up hearing held by the Senate Special Committee on Aging, witnesses from the drug industry and consumer interests generally praised the Part D program as providing necessary access for seniors and providing help in lowering beneficiary costs as well as other hospital and medical costs that beneficiaries might otherwise have incurred without the drug coverage. However, the AARP witness urged the passage of H.R. 1588 and S. 740, the "Medicare Drug Savings Act," which would require drug manufacturers to offer new rebates for drugs provided to Medicare/Medicaid dual-eligibles.

Meaningful Use Incentive Payment Stats

HS announced that Medicare and Medicaid Electronic Health Record Incentive programs will have been successful in providing incentive payments to over 50% of doctor offices and 80% of hospitals for adopting electronic health record systems through 2013. CMS has awarded \$14.6 billion in such payments to date.

SAMHSA Comes Under Fire in House Hearing on Mental Health

At a House Energy and Commerce Oversight and Investigations Subcommittee hearing, Chairman Tim Murphy said that the Substance Abuse and Mental Health Services Administration (SAMHSA) "has not made the treatment of the seriously mentally ill a priority" in light of the Newtown, Connecticut elementary school shooting. The SAMHSA Administrator disagreed and said that about 21-25% of the agency's budget is devoted to serious mental illnesses and emotional disturbances. Democrats noted that sequestration will have a negative effect on the agency's priorities and that Congress can help alleviate the shortfall through the appropriations process.

FDA Issues

Senate HELP Committee Approves Compounding and Drug Supply Chain Bills

The Senate HELP Committee has cleared for floor action a bill combining S. 959 (the Pharmaceutical Compounding Quality and Accountability Act) and S. 957 (the Drug Supply Chain Security Act). The compounding provisions would give the FDA authority to regulate “compounding manufacturers” which make sterile products without, or in advance of, a prescription and sell them on an interstate basis. The drug supply chain provisions would provide for a uniform federal standard for tracking drugs that would replace state laws and result in electronic, interoperable unit-level drug tracking for the entire country. While the House Energy and Commerce Committee has passed drug tracking legislation, H.R. 1919, the committee’s Republicans appear to be resisting legislation to further regulate drug compounding organizations with some suggesting that the FDA already has appropriate regulatory authority. At a House Energy and Commerce Health Subcommittee hearing on the latter issue, Rep. Michael Burgess (R-TX) maintained that the FDA did not take steps that might have stopped the fungal meningitis outbreak caused by a Massachusetts compounding center, even though the agency apparently knew the center was making “poor products for years.” He said the FDA has recently inspected more than 50 compounding pharmacies, indicating the agency either has the authority to oversee such compounding entities or is acting without authority and risking litigation. Rep. Joe Barton (R-TX) said that he is hesitant to preempt state regulatory authority which may be as effective as any new authority that may be given the FDA by means of legislation. Nonetheless, the Director of the FDA Center for Drug Evaluation and Research testified that new federal legislation is needed to give the FDA the tools to regulate high-risk compounding practices, particularly in light of resistance by compounders to provide the agency with access to their records.

Health Legislation Recently Introduced

H.RES. 219 (HIV/AIDS), supporting the goals and ideals of National Asian and Pacific Islander HIV/AIDS Awareness Day; BORDALLO; to the Committee on Energy and Commerce, May 17.

H.R. 2053 (MEDICARE), to amend Title XVIII of the Social Security Act to apply budget neutrality on a state-specific basis in the calculation of the Medicare hospital wage index floor for non-rural areas; BRADY of Texas; to the Committee on Ways and Means, May 20.

H.R. 2055 (ELECTRONIC HEALTH RECORDS), to establish a prize program to award a prize and contract for the development of a fully integrated electronic health records program for use by the Department of Defense and the Department of Veterans Affairs; ROE of Tennessee; jointly, to the committees on Armed Services and Veterans’ Affairs, May 20.

H.R. 2058 (CHILDREN’S HEALTH), to improve and enhance research and programs on childhood cancer survivorship, and for other purposes; SPEIER; to the Committee on Energy and Commerce, May 20.

H. RES. 226 (CHILDREN’S HEALTH), expressing support for the designation of the fourth week in April as Every Kid Healthy Week; DANNY K. DAVIS of Illinois; to the Committee on Energy and Commerce, May 20.

S. 998 (HOME CARE), to amend the Older Americans Act of 1965 to establish a Home Care Consumer Bill of Rights, to establish State Home Care Ombudsman Programs, and for other purposes; FRANKEN; to the Committee on Health, Education, Labor, and Pensions, May 21.

H.R. 2073 (PULMONARY HYPERTENSION), to direct the secretary of health and human services to establish an interagency coordinating committee on pulmonary hypertension to develop recommendations to advance research, increase awareness and education, and improve health and health care, and for other purposes; BRADY of Texas; to the Committee on Energy and Commerce, May 21.

H.R. 2079 (VETERANS’ HEALTH), to provide for a three-year extension of the authority of the secretary of veterans affairs to provide for the conduct of medical disability examinations by contract physicians; RADEL; to the Committee on Veterans’ Affairs, May 21.

Health Legislation Recently Introduced cont.

S. 1012 (MEDICARE), to amend Title XVIII of the Social Security Act to improve operations of recovery auditors under the Medicare Integrity Program, to increase transparency and accuracy in audits conducted by contractors, and for other purposes; BLUNT; to the Committee on Finance, May 22.

S. 1013 (PATENT INFRINGEMENT), to amend Title 35, U.S. Code, to add procedural requirements for patent infringement suits; CORNYN; to the Committee on the Judiciary, May 22.

S. 1027 (NIH), to improve, coordinate, and enhance rehabilitation research at the National Institutes of Health; KIRK; to the Committee on Health, Education, Labor and Pensions, May 22.

H.R. 2085 (MEDICARE), to create incentive for innovative diagnostics by improving the process for determining Medicare payment rates for new tests; ROSKAM; jointly, to the committees on Energy and Commerce and Ways and Means, May 22.

H.R. 2087 (PATIENT NAVIGATOR PROGRAM), to prohibit federal funds for the establishment or operation of patient navigator programs under the Affordable Care Act, and for other purposes; BLACK; to the Committee on Energy and Commerce, May 22.

H.R. 2090 (FDA FAST TRACK), to amend Chapter V of the Federal Food, Drug, and Cosmetic Act to permit provisional approval of fast-track products; GRIFFITH of Virginia; to the Committee on Energy and Commerce, May 22.

H.R. 2094 (ASTHMA), to amend the Public Health Service Act to increase the preference given, in awarding certain asthma-related grants, to certain states (those allowing trained school personnel to administer epinephrine and meeting other related requirements); ROE of Tennessee; to the Committee on Energy and Commerce, May 22.

H.R. 2101 (EATING DISORDERS), to amend the Public Health Service Act with respect to eating disorders, and for other purposes; DEUTCH; jointly, to the committees on Energy and Commerce, Ways and Means, Oversight and Government Reform, and Education and the Workforce, May 22.

S. 1031 (HEALTH SAVINGS ACCOUNTS), to amend the Internal Revenue Code of 1986 to improve access to health care through expanded health savings accounts, and for other purposes; HATCH; to the Committee on Finance, May 23.

S. 1053 (MEDICARE), to amend Title XVIII of the Social Security Act to strengthen and protect Medicare hospice programs; WYDEN; to the Committee on Finance, May 23.

S. 1060 (EMERGENCY MEDICAL SERVICES), to amend the Public Health Service Act to facilitate emergency medical services personnel training and certification curriculums for military veterans; KLOBUCHAR; to the Committee on Health, Education, Labor, and Pensions, May 23.

S. 1061 (HEALTH PROFESSIONAL SHORTAGE AREAS), to amend the Public Health Service Act to designate certain medical facilities of the Department of Veterans Affairs as health professional shortage areas, and for other purposes; KLOBUCHAR; to the Committee on Health, Education, Labor and Pensions, May 23.

S. 1064 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for treatment of clinical psychologists as physicians for purposes of furnishing clinical psychologist services under Medicare; BROWN; to the Committee on Finance, May 23.

S. 1078 (TRICARE), to direct the secretary of defense to provide certain TRICARE beneficiaries with the opportunity to retain access to TRICARE Prime; KLOBUCHAR; to the Committee on Armed Services, May 23.

H.R. 2122 (REGULATORY PROCESS), to reform the process by which federal agencies analyze and formulate new regulations and guidance documents; GOODLATTE; to the Committee on the Judiciary, May 23.

H.R. 2123 (MEDICAID), to amend Title XIX of the Social Security Act to extend the Medicaid rules regarding supplemental needs trusts for Medicaid beneficiaries to trusts established by those beneficiaries; THOMPSON of Pennsylvania; to the Committee on Energy and Commerce, May 23.

Health Legislation Recently Introduced cont.

H.R. 2125 (REFORM), to prevent implementation and enforcement of Obamacare; SHUSTER; jointly, to the committees on Ways and Means, Energy and Commerce, Education and the Workforce, the Judiciary, Natural Resources, and House Administration, May 23.

H.R. 2130 (SUBSTANCE ABUSE), to amend the Public Health Service Act to provide grants for treatment of heroin, cocaine, methamphetamine, 3,4-methylenedioxy-methamphetamine (ecstasy), and phencyclidine (PCP) abuse, and for other purposes; CARTWRIGHT; to the Committee on Energy and Commerce, May 23.

H.R. 2135 (MEDICAL LIABILITY), amend the Public Health Service Act to clarify liability protections regarding emergency use of automated external defibrillators; OLSON; to the Committee on Energy and Commerce, May 23.

H.R. 2143 (PUBLIC HEALTH), to amend Title IX of the Public Health Service Act to revise the operations of the U.S. Preventive Services Task Force; BLACKBURN; jointly, to the committees on Energy and Commerce and Ways and Means, May 23.

H.R. 2153 (VETERANS' HEALTH), to amend Title 38, U.S. Code, to require the reporting of cases of infectious diseases at facilities of the Veterans Health Administration, and for other purposes; DOYLE; to the Committee on Veterans' Affairs, May 23.

H.R. 2160 (CHILDREN'S HEALTH), to support and encourage the health and well-being of elementary school and secondary school students by enhancing school physical education and health education; FUDGE; to the Committee on Education and the Workforce, May 23.

H.R. 2164 (HUMAN CLONING), to amend Title 18, U.S. Code, to prohibit human cloning; HARRIS; to the Committee on the Judiciary, May 23.

H.R. 2165 (REFORM), to amend the Public Health Service Act to provide individual and group market reforms to protect health insurance consumers; to make such reforms and protections contingent on the enactment of legislation repealing the Affordable Care Act; and for other purposes; HECK of Nevada; jointly, to the committees on Energy and Commerce, Education and the Workforce, Ways and Means, and the Judiciary, May 23.

H.R. 2181 (MEDICARE/MEDICAID), to amend titles XVIII and XIX of the Social Security Act with respect to the qualification of the director of food services of a Medicare skilled nursing facility or a Medicaid nursing facility; LATHAM; jointly, to the committees on Ways and Means and Energy and Commerce, May 23.

H.R. 2186 (COMPOUNDING DRUGS), to amend the Federal Food, Drug, and Cosmetic Act to provide for the compounding of drug products; MARKEY; to the Committee on Energy and Commerce, May 23.

H.R. 2194 (HEALTH SAVINGS ACCOUNTS), to amend the Internal Revenue Code of 1986 to improve access to health care through expanded health savings accounts, and for other purposes; PAULSEN; jointly, to the committees on Ways and Means, the Judiciary, and Energy and Commerce, May 23.

H.RES. 237 (CHILDREN'S HEALTH), expressing the sense of the House of Representatives with respect to childhood stroke and recognizing May 2013 as National Pediatric Stroke Awareness Month; HIMES; to the Committee on Energy and Commerce, May 23.